IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964.

No. 48.

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

JAMES M. PENNINGTON, RAYMOND E. PHILLIPS and LILLIAN GOAD PHILLIPS, Admx. of the Estate of Burse Phillips, Deceased,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

BRIEF

Of Respondents in Reply to the Brief of AFL-CIO as Amicus Curiae, Particularly With Respect to the Legislative History of the Taft-Hartley Act and Consideration by Congress of the Allen Bradley Rule.

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Of Respondents in Reply to the Brief of AFL-CIO as Amicus Curiae, Particularly With Respect to the Legislative History of the Taft-Hartley Act and Consideration by Congress of the Allen Bradley Rule.

Since filing the main reply brief Counsel for Respondents has had an opportunity to review the legislative history of the Taft-Hartley Act. The Amicus Curiae brief of AFL-CIO, at pages 23-24, made reference to parts of

this legislative history. The remarks made here supplement pages 24-27 of Respondents' main reply brief.

We believe that a thorough analysis of the legislative history of Taft-Hartley strongly indicates absence of intent on the part of Congress to weaken or change the anti-trust law and particularly shows no intent to change the then existing decisions of the Supreme Court interpreting the anti-trust statutes with respect to the position of a labor union under those statutes, including the rule in Allen Bradley Co. v. IBEW Local 3, 325 U. S. 797, which had been decided by the Supreme Court in 1945.

The two parts of the bills leading up to the Taft-Hartley Act which touched upon anti-trust law were the language relating specifically to the Clayton and Norris-LaGuardia exemptions of labor unions from the anti-trust law, and the language pertaining to boycotts.

I. The Disposition of the Language in Bills Designed to Make Specific Changes in the Clayton and Norris-LaGuardia Exemptions of Labor Unions Under the Anti-Trust Law Shows No Intent on the Part of Congress to Change the Anti-Trust Law as It Existed in 1947.

H. R. 3020, as it passed the House, contained Section 301 (b), reading as follows:

> "(b) Section 6 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended, is amended by inserting before the period at the end thereof a colon and the following: 'Provided, however, That it shall not be within the legitimate objects of labor organizations or the officers, representatives, or members thereof, to make any contract, or to engage in any combina-

tion or conspiracy, in restraint of commerce, if one of the purposes or a necessary effect of such contract, combination, or conspiracy is to join or combine with any person to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions, upon the purchase, sale, or use of any product, material, machine, or equipment, or to engage in any concerted activity declared to be unlawful under section 12 of the National Labor Relations Act, as amended.'" (Legislative History of the Labor Management Relations Act 1947, U. S. Government Printing Office, 1948, Vol. 1, pp. 220-221.)

The above language extends beyond the Allen Bradley situation where a labor union conspires with business groups to aid such groups in restraining and monopolizing trade. The House Report No. 245 on H. R. 3020 stated:

"Section 301 contains the amendments to the Clayton Act that were included in the Case Bill of last year, and which at that time passed the House by an overwhelming majority." (Legislative History of the Labor Management Relations Act, 1947, supra, p. 336.)

The Case Bill had been broadly interpreted to extend beyond the Allen Bradley type of conspiracy. When the President vetoed the Case Bill his message stated:

"Section 11. This provision subjects various union activities to the anti-trust laws with all their criminal sanctions, injunctive remedies, and provisions for treble damages. Although the section is entitled 'Secondary boycotts,' the scope of the section in fact extends far beyond such matters. While its enactment would provide remedies that might result in the elimination of certain evils, such as improper application of the secondary boycott, it would also make those remedies available against recognized legitimate activities of organized labor.

"That there are some abuses in this field, no one can gainsay. I deplore the strike or boycott arising out of a jurisdictional dispute as one of the most serious of such abuses. A way must be found to prevent the jurisdictional strike. It cannot be justified under any circumstances. I am convinced, however, that the anti-trust laws, the objectives of which are the elimination of unfair business practices and the protection of free competition, are not designed to solve the abuses pointed out in this section.

"In this regard, however, I do not need to emphasize the necessity of applying the anti-trust laws to combinations between employers and labor designed to restrain competition." (Emphasis added.) (U. S. Code Congressional Service, 1946, 79th Congress, Second Session, page 1691.)

That the rejection of the foregoing language by Congress was attributable to the fact that it extended beyond the Allen Bradley type of conspiracy, is indicated in the House Minority Report No. 245, on H. R. 3020, where the minority reported:

"Section 301 of title II again subjects trade unions to criminal prosecution and treble damage suits under the antitrust laws regardless of whether they are legitimately seeking to preserve union wage rates and standards. **Insofar as this section makes it a violation of the antitrust laws for labor to combine with nonlabor groups to fix prices, restrict production, or to control markets it is completely unnecessary. The Supreme Court has repeatedly held that the antitrust laws apply to restraints imposed on commerce by the combination of a union with nonlabor groups.** But subsection (d) of section 301 sweeps within the scope of criminal prosecution 'any concerted activity declared to be unlawful in section

12 of the National Labor Relations Act as amended.' Thus, for example, all boycotts as defined in section 2, including refusal to work on or install nonunion-made goods, or a refusal to work on jobs with which the nonunion employer is connected are subjected to criminal sanctions.

* * * * * * * *

"Section 301 would turn the clock back to the period before 1914 and would encourage new industrial strife. Once again the Danbury Hatters case and the Duplex and Bedford Stone case might become the prevailing law." (Emphasis added) (Legislative History of Labor Managements Relations Act, 1947, supra, pp. 398-399.)

The amicus curiae brief of AFL-CIO at page 24 referred to the above quoted language in the House Bill but did not make note of the existence of similar language in proposed amendments to the Senate Bill. Senate Report No. 185 on S. 1126, Supplemental Views, sought to have added to the Senate Bill a section 303(d) as follows:

"(d) The provisions of sections 6 and 20 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and the provisions (except section 7, exclusive of clauses (c) and (e) and sections 11 and 12) of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932, shall not be applicable in respect of violations of subsection (a) or in respect of any contract, combination, or conspiracy, in restraint of commerce, to which a labor organization is a party, if one of the purposes of such contract, combination, or conspiracy is to fix prices, allocate customers, restrict produc-

tion, distribution, or competition, or impose restrictions or conditions upon the purchase, sale, or use of any material, machines, or equipment." (Legislative History of the Labor Management Relations Act, 1947, supra, pages 461-462.)

Senator Ball introduced the foregoing language on the Senate floor at page 4887 of the Congressional Record for May 8, 1947. (Legislative History of the Labor Management Relations Act, 1947, supra, pages 1323-1324.)

The Congressional Record for May 9, 1947, page 5040, shows the following colloquy between Senator Ball and Senator Pepper, Senator Ball's statement being the first part of the following quotation:

"That language is designed to correct the interpretation of the Norris-LaGuardia and Clayton Acts made by the Supreme Court in the Hutcheson case, and a number of other cases brought by former Assistant Attorney General Thurman Arnold, when he attempted to break up monopolistic practices on the part of labor unions, sometimes acting on their own, sometimes in conspiracy with employers. They were engaging in all kinds of price-fixing. They were attempting to determine, on their own responsibility, what products should be used in industry, what kind of machines, and what products the public should be entitled to buy.

"Mr. Pepper: Mr. President, will the Senator yield?

"Mr. Ball: I yield.

"Mr. Pepper: The able Senator says the purpose o this portion of the amendment is to correct a decision of the United States Supreme Court. What he means is that it is intended to overrule or set aside the holding of the United States Supreme Court that the Clayton Act and the Sherman Antitrust Act do not apply to labor organizations and to permit the application of the Clayton Act and the Sherman Antitrust Act to the acts set out in the words of the amendment.

"Mr. Ball: The Senator can phrase it in any way he desires; whether it is 'to correct' or 'overrule', it means the same thing. There is no reason why those acts should not be applicable."

(Legislative History of the Labor Management Relations Act, 1947, supra, page 1354.)

The fear that the foregoing proposed amendment was too broad was expressed by Senator Morse at page 5044 of the Congressional Record for May 9, 1947, as follows:

"The language of this section would revive the case of Duplex v. Deering (254 U. S. 443), and the Bedford Cut Stone case (274 U. S. 37)."

(Legislative History of the Labor Management Relations Act, 1947, supra, p. 1363.)

And Senator Pepper expressed the same fear at page 5048 of the Congressional Record as follows:

"The second point is that the amendment is designed, as the Senator from Minnesota pointed out, to overrule or correct, as he stated, the decision of the United States Supreme Court that the antitrust laws of the United States are not intended to be applied to labor unions. The Senator from Minnesota is trying to reverse or set aside that decision of the Supreme Court and to make the antitrust laws applicable to labor unions. I do not believe the Senate wishes to make those two radical departures from either the present law or the present decisions of the Supreme Court of the United States."

(Legislative History of the Labor Management Relations Act, 1947, supra, p. 1367.)

After the foregoing discussion the proposed amendment was defeated. (Legislative History of the Labor Management Relations Act, 1947, supra, page 1370.)

Senator Taft introduced at this point an amendment which finally became law, but which eliminated the amendment of the Clayton and Norris-LaGuardia Acts proposed by Senator Ball as set forth above, at page 5060 of the Congressional Record. Senator Taft said with respect to his proposed amendment:

> "This is similar to the Ball amendment, dealing with the jurisdictional strikes and secondary boycotts. It eliminates the injunctive process, the suspension of the Norris-LaGuardia Act, which I found was creating so much difficulty . . ."
>
> (Legislative History of the Labor Management Relations Act, 1947, supra, page 1370.)

The foregoing history of the proposed language in the House and Senate Bills relating to amendment of the Clayton Act or other antitrust statutes, shows no disposition on the part of Congress to change the antitrust laws. Rather it shows conclusively that Congress accepted the law as it existed at that time under the decisions of the Supreme Court, including the Allen Bradley case.

II. The Boycott Provisions of the Taft-Hartley Act Show No Disposition on the Part of Congress to Change the Antitrust Law.

The language of the Act with respect to boycotts certainly does not encompass a conspiracy between a union and business groups to aid the business groups in accomplishing a restraint of trade or monopoly. If Congress intended to change the Allen Bradley rule, after that rule had been called to its attention, it would have expressly done so. It appears that Congress, in the boycott provisions of the Act, was concerned with the problem outside of the Allen Bradley type of conspiracy, the same as was the President in his Case Bill veto, which is quoted from above.

The problem has to do with a situation where the union is not aiding or abetting a business group in restraining trade or monopolizing. This problem involves a union acting alone, for its own self-interest, engaging in jurisdictional or secondary boycotts; and also a situation where, as developed in the Allen Bradley matter, the illicit conspiracy has been found and enjoined in a Sherman Act case but the union continues its boycott and asserts that the continuance is by the union alone and not in conspiracy with business groups.

The AFL-CIO brief, pages 23-24, quotes from the Senate Committee Report on the boycott provision, and contends this language shows intent to encompass within the labor law boycott provision the entire regulation of union restraint of trade practices regardless of whatever type of conspiracy the union enters upon. The Committee Report (No. 105) reads in full at this point as follows:

> "This paragraph also makes it an unfair labor practice for a union to engage in the type of secondary boycott that has been conducted in New York City by Local No. 3 of IBEW, whereby electricians have refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than Local No. 3. (See testimony of R. S. Edwards, Vol. 1, p. 176, et seq.; Allen Bradley Co. v. Local Union No. 3, IBEW, 325 U. S. 797.)"

The report of hearings encompassing the testimony of Mr. R. S. Edwards, referred to at the end of the foregoing quotation from the Senate Committee Report, includes a colloquy between Mr. Edwards and the committee members showing clearly that the intent of the boycott provision was not to weaken or change the antitrust law, but was to provide a remedy for the situation where the union was acting alone and not in combination with business groups. Thus at page 184 of the Hearings before the

Committee on Labor and Public Welfare, United States Senate, 80th Congress, First Session on S. 55 and S. J. Res. 22, being for the date January 29, 1947, the following occurred:

"The Chairman: I do not want to go into the law end of it, but as I remember the union and the manufacturers, or the distributors, contractors, were indicted under the Sherman Act for monopoly as long as the contractors were in on it. It was found to be illegal, was it not?

"Mr. Edwards: That is all covered. That is the Allen Bradley case that reached the Supreme Court. That is covered in the filed brief, and I have a very short comment on that.

"The Chairman: Then later when the contractors withdrew entirely, the Supreme Court held that the monopoly exercised by the union was not in violation of the Sherman Act or any of the existing statutes. Is that correct?

"Mr. Edwards: That is right, sir.

"The Chairman: So if anything is to be done about it, there is clearly no present remedy under present law.

"Mr. Edwards: There is no remedy.

"I would like to quote also another paragraph from Mr. Weir's affidavit.

'Within the last month—

this is Mr. Weir speaking—

"'the union notified my association through me, that, beginning the 15th of January, it would not allow employees of wholesalers with whom it had contracts to sell or deliver any electrical materials to contractors whose employees were not members of IBEW Local No. 3, notwithstanding the fact that this union has a full, closed membership in their contracting group and has expressly stated that they would not accept any new members.'"

It seems clear that the observations in the foregoing quotation relate to the following language of this Court in its opinion in Allen Bradley at pages 810-811:

> "Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. This, it is argued, brings about a wholly undesirable result —one which leaves labor unions free to engage in conduct which restrains trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress.
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> * * * * * * * *
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> "Congress evidently concluded, however, that the chief objective of antitrust legislation, preservation of business competition, could be accomplished by applying the legislation primarily only to those business groups which are directly interested in destroying competition. The difficulty of drawing legislation primarily aimed at trusts and monopolies so that it could also be applied to labor organizations without impairing the collective bargaining and related rights of those organizations has been emphasized both by congressional and judicial attempts to draw lines between permissible and prohibited union activities. There is, however, one line which we can draw with assurance that we follow the congressional purpose. We know that Congress feared the concentrated power of business organizations to dominate markets and prices. It intended to outlaw business monopolies. A business monopoly is no less such because a union participates, and such participation is a violation of the Act."

CONCLUSION.

It is submitted that the foregoing legislative history shows no intent on the part of Congress to weaken or change the antitrust law as it existed in 1947, after the Allen Bradley decision; rather it appears strongly that Congress was primarily concerned with strengthening the Labor Law in a situation, outside of the Allen Bradley type of conspiracy, where the union was acting alone for its own benefit, in the limited situation specified in the secondary boycott provisions of the Taft-Hartley Act.

Respectfully submitted,

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